

PT 97-52  
Tax Type: PROPERTY TAX  
Issue: Charitable Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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HOMER DAHRINGER	)	
POST MEMORIAL	)	Docket No: 94-49-460
ASSOCIATION,	)	
APPLICANT	)	
	)	
v.	)	Real Estate Exemptions
	)	for 1994 Tax Year
	)	
STATE OF ILLINOIS,	)	P.I.N.: 08-21-422-001
DEPARTMENT OF REVENUE	)	
	)	
	)	
	)	Alan I. Marcus,
	)	Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCE:** Mr. Richard Bairstow appeared on behalf of the Homer Dahringer Post Memorial Association.

**SYNOPSIS:** This proceeding raises the limited issue of whether Lake County Parcel Index Number 08-21-422-001-004 (hereinafter the "subject parcel") should be exempt from 1994 real estate taxes under 35 ILCS 200/15-145,<sup>1</sup> which states as follows:

All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes is exempt [from real estate taxation].

35 ILCS 200/15-145.

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1. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), (hereinafter "Bracher"), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code (35 ILCS 200\1-1 et seq).

The controversy arises as follows:

On November 6, 1994, the Homer Dahringer Post Memorial Association (hereinafter the "Association" or the "applicant") filed an Application for Property Tax Exemption with the Lake County Board of Review (hereinafter the "Board") (Dept. Group Ex. No. 1). The Board reviewed applicant's complaint and subsequently recommended to the Department of Revenue (hereinafter the "Department") that the requested exemption be granted. (Dept. Ex. No. 1).

On November 11, 1995, the Department rejected this recommendation by issuing a determination finding that the subject parcel was not in exempt use. (Dept. Ex. No. 2). The Association subsequently filed a timely appeal as to this denial (Dept. Ex. No. 3) and thereafter presented evidence at a formal administrative hearing that took place on November 8, 1996. Following submission of all evidence and a careful review of the record, it is recommended that the subject parcel not be exempt from 1994 real estate taxes.

**FINDINGS OF FACT:**

1. The Department's jurisdiction over this matter and its position therein, namely that the subject parcel was not in exempt use during 1994, are established by the admission into evidence of Dept. Ex. Nos. 1 and 2.

2. Applicant acquired its ownership interest in the subject parcel, which is improved with a one-story building that features a basement and occupies 19,008 square feet, via a quitclaim deed dated June 17, 1946. Dept. Ex. No. 1; Applicant Ex. No. 1; Tr. p. 9.

3. The Association is an Illinois not-for-profit corporation. Its original Articles of Incorporation were filed on September 18, 1944 and indicate that the corporation is organized for "social, civic and patriotic purposes." Applicant Ex. No. 2.

4. Applicant's by-laws contain the following statement:

Section 2, Object. The corporation is organized for the purpose and with the object to provide, own and maintain a suitable memorial for Homer Dahringer Post #281, [hereinafter the "Post"] the American Legion, Department of Illinois, in order that the said Post may properly carry forward in the City of Waukegan, the purposes and principles of the American Legion as set forth in the preamble to the Constitution of The American Legion.

Applicant Ex. No. 4.<sup>2</sup>

5. The Post is affiliated with the American Legion, a national veteran's organization that was created pursuant to an Act of Congress. Its membership consists of those who served in the United States Armed Forces during a time of peace or war. Tr. pp. 26, 36.

6. The Post operates under a Constitution and by-laws. Its Constitution was most recently revised in 1971 and begins with the following preamble:

For G-D and Country, we associate ourselves together for the following purposes: To uphold and defend the Constitution of the United States of America; to maintain law and order; to foster and perpetuate a one hundred per cent Americanism [sic]; to preserve the memories and incidents of our association in the Great Wars; to inculcate a sense of individual obligation to the community, state and nation; to combat the autocracy of both the classes and the masses; to make right the master of might; to promote peace and goodwill on earth; to safeguard and transmit to posterity the principles of

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<sup>2</sup>. The applicant's exhibits were inadvertently misnumbered so that "Applicant Ex. No. 4" actually appears on two documents, the Association's by-laws and the Post's 1993 federal income tax return. In order to avoid further confusion, the applicant's exhibits are hereby renumbered as follows: Applicant Ex. No. 1 quitclaim deed dated June 17, 1946; Applicant Ex. No. 2 is applicant's Articles of Incorporation; Applicant Ex. No. 3 is the Post's Constitution and by-laws; Applicant Ex. No. 4 is the Association's by-laws; Applicant Ex. No. 5 is the Post's federal income tax return for the period beginning August 1, 1993 and ending July 31, 1994; Applicant Ex. No. 6 is the Post's federal income tax return for the period beginning August 1, 1994 and ending July 31, 1995; Applicant Ex. No. 7 is the Post's Charitable Organization Supplement for the period beginning August 1, 1993 and ending July 31, 1994; and Applicant's Ex. No. 8 is the Post's Charitable Organization Supplement for the period beginning August 1, 1994 and ending July 31, 1995.

justice, freedom and democracy; to consecrate and sanctify our comradeship by our devotion to mutual helpfulness.

Applicant Ex. No. 3.

7. The Post's Constitution also provides, *inter alia*, that:

- A. The Post is strictly an apolitical organization;
- B. Dues must be paid annually, for 5 years, or for life;
- C. The Post's revenues shall be derived from annual membership dues and from such other sources as may be approved by a majority of members present at any regular or special meeting;
- D. The amount of such dues shall be determined at each annual meeting of the Post and shall be due on January first of each year;
- D. Regular meetings of the Post shall be held on the first and third Thursdays of each month at eight o'clock p.m[;]
- E. The Executive Committee, (which under the Post's by-laws is responsible for investigating grievances and charges against members as well as acting for the Post in emergency situations), after due notice and a hearing, may suspend and expel any member; and,
- F. The Post recognizes an Auxiliary organization known as "The American Legion Auxiliary to the Homer Dahringer Post No. 281, Department of Illinois." [hereinafter the "Auxiliary"].

*Id.*

8. The Post's by-laws establish and define duties for its various officers, including the Post Commander, Vice Commanders, Adjunct and Finance Officer. They also prescribe various duties for the Post's numerous committees and provide, *inter alia*, that:

- A. Those seeking membership in the Post must complete a written application and submit same to the Membership Committee, which then makes a recommendation to the Post's existing membership;
- B. The membership may, by majority vote of those present, accept or reject the Membership Committee's recommendation;

C. Members may be suspended or expelled from the Post only upon a proper showing of cause. Charges shall be based upon disloyalty, neglect of duty, dishonesty and conduct unbecoming a member of the American Legion;

D. All charges must be made under oath in writing and proven at a duly convened hearing; and,

E. Members in arrears for four months in payment of dues shall be classified as delinquent and six months' arrearages shall automatically impose suspension from all privileges, on one year's arrearages shall automatically forfeit membership in The American Legion. Any member so delinquent or suspended may be reinstated to active membership in good standing by vote of the Post upon payment of the dues for the current year in which the reinstatement occurs.

*Id.*

9. The Post's membership dues are \$20.00 per year. Tr. p.

35.

10. The Post used the subject premises to plan, participate in or conduct the following activities during 1994: Gifts to Yanks Who Gave, a program whereby the Post distributes clothing to veterans hospitalized at Downey Veterans Hospital [hereinafter the "Hospital"]; Canteen books, which enable Hospitalized soldiers to buy toothbrushes and other necessities; Distribution of radios and other items to Hospitalized veterans; Rehearsals for its Honor Guard, which participates in various parades and funerals; Boys State, a program that enables local youngsters to go to Springfield and learn how State government operates; Service Officer, a program that funds the lodging expenses of veterans who come in from out of town; Participation in the State Convention of the American Legion; Christmas Basket, a program that caters to the needs of local veterans in need of food; ROTC Marksmanship program; Fund raising for donations to various local organizations, such as Mothers Against Drunk Driving and Goldstar mothers, (an organization for mothers and grandmothers of veterans killed during a war) and the local 4th of July Parade; Activities surrounding the annual Memorial Day Parade and luncheon; Sponsorship of the Waukegan Baseball Association, the Mustang Baseball League and other local youth programs; Conducting and providing

instruction in the proper ceremonies attendant to destroying an American flag; Assisting the local Boy Scout troop with various community service projects; Administering a nurse's scholarship fund program, which provided grants to four nursing students at College of Lake County who were required to work in veteran's hospitals after they graduated; Blood drives; Decorating the graves of veterans buried in local cemeteries with American flags; Distributing American flags free of charge to local organizations;<sup>3</sup> Presenting American flags at veterans' funerals;<sup>4</sup> Weekly Bingo and Pull tab games; and, Planning and preparation for Poppy Days, wherein the Post sells the artificial poppy flowers that are the veterans' symbol. Tr. pp. 14 - 33.

11. The poppies are made by veterans hospitalized at various Veteran's Association [hereinafter "VA"] hospitals. All proceeds from their sales go back into veteran's programs and the VA. Tr. p. 25.

12. The Post derives its funds from the following sources during 1994: membership dues; poppy sales; bingo; a bar which the Post operates during meetings and other Post functions. Applicant Ex. Nos. 5, 6; Tr. p. 54.

13. The Post employs a caretaker who resides on the subject premises. This individual receives a salary of \$1,100.00 per month yet pays no rent. His room and board are included in the compensation package he receives from the Post, as are payment of his insurance and telephone bill. Tr. p. 54.

14. The Auxiliary used the subject premises to plan, participate in or conduct the following activities during 1994: An essay contest for children at local schools; Flag giveaways for girl scout troops; Donations to various organizations, such as the March of Dimes, the Goldstar Member Program (which supports the sisters, mothers, grandmothers, or stepmothers of veterans who died during the wars) and the United Way; Donations to veterans residing in Waukegan

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<sup>3</sup>. Approximately 35 organizations participated in this program during 1994. Tr. pp. 23-24.

<sup>4</sup>. Roughly 35 Post veterans die each year. Tr. p. 24.

nursing homes; Picnics for physically and mentally challenged children residing at the Kiely Center and the Allendale; Unspecified work with the Special Olympics; Buying and wrapping gifts for halfway houses and other homes in the Waukegan area; Collecting hats and mittens for distribution at local elementary schools; Awarding two nursing scholarships; Girl's States [sic], a program wherein local girls are sent to Springfield in order to learn about State government; Sending members of the Junior Auxiliary to a conference; Donating to the local ROTC and presenting members of same with various awards; Making cakes for the USO; Planning parties for Hospitalized veterans; Conducting bingo games at the Hospital; Planning for veteran's bowling trips, all which include breakfast and lunch; Wrapping gifts for Hospitalized veterans to give to their families; Serving funeral lunches; Participating in an annual special program that is chosen by the president of the Illinois Department of the American Legion Auxiliary; and periodic luncheons called "A Luncheon is Served." Tr. p. 39 - 47.

15. The Auxiliary derives its funds from the following sources: dues; poppy sales; its "A Luncheon is Served" program; raffles and sales of sandwiches and cakes at the weekly bingo games. Tr. pp. 47 - 49, 52 - 53.

#### **CONCLUSIONS OF LAW:**

On examination of the record established this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject parcel from 1994 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject parcel does not satisfy the requirements for exemption set forth in 35 **ILCS** 200/15-145 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-3 *et seq.* (hereinafter the "Code"). Applicant posits (both in its brief and at Tr. p. 6) that this proceeding is governed by the following Code provisions, which appear in 35 **ILCS** 200/15-145:

All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes is exempt [from real estate taxation].

35 **ILCS** 200/15-145.

It is well established in Illinois that statutes exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968) (hereinafter "Nordlund"); Gas Research Institute v. Department of Revenue, 154



Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

An analysis of whether this applicant has met its burden of proof begins with some fundamental principles: first, that the word "exclusively," when used in Sections 200/15-145 and other tax exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Gas Research Institute v. Department of Revenue, 145 Ill. App.3d 430 (1st Dist. 1987); Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). Second, that "statements of the agents of an institution and the wording of its governing documents evidencing an intention to [engage in exclusively charitable activity] do not relieve such an institution of the burden of proving that ... [it] actually and factually [engages in such activity]." Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987). Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is a charitable organization as it purports to be in its charter." *Id.*

The first step in applying the above criteria is recognizing that the Association and the Post are separate legal entities. One must also recognize that the Post held no ownership interest in the subject parcel during 1994. Rather, the deed submitted as Applicant Ex. No. 1 establishes that the Association was vested with legal title to the subject parcel throughout that assessment year.

These distinctions are important because the preposition "of[,]" which modifies the words "veteran's organizations" in Section 200/15-145, connotes an ownership requirement. Our Supreme Court has interpreted this and other

statutory exemption requirements pertaining to "veteran's organizations" as follows:

... In order to qualify its property for exemption the party seeking it must prove *that it is the type of organization or institution described in the applicable exempting statute* and that its property is exclusively used for the purposes set forth in the act. [citations omitted]. Specifically, the plaintiff need not here prove that it is a charitable institution but rather *that it is a veteran's organization* and that its property is used exclusively for charitable, patriotic and civic purposes.

North Shore Post No. 21 of the American Legion v. Korzen, 38 Ill.2d 231, 234 (1967) (Hereinafter "Post No. 21"). [Emphasis added].

Here, the Post's constitution and by-laws clearly establish that it is a "veteran's organization" within the meaning of Section 200/15-145. However, the Post neither owns the subject parcel nor is the applicant herein. Thus, the Post No. 21 holding mandates that any evidence pertaining to its use of the subject parcel is not decisive of the present exemption application. Rather, said application must be decided according to whether the Association, which does own the parcel and *is* the applicant herein, satisfies the above-stated exemption requirements.

The Association does not satisfy these requirements for numerous reasons. First, neither its Articles of Incorporation nor its by-laws contain any reference to "charity." Illinois courts have, on more than one occasion, indicated that lack of such wording in organizational documents can provide evidence that the applicant is not in fact organized for exempt purposes. People ex. rel. Nordlund v. Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Albion Ruritan Club v. Department of Revenue, 209 Ill. App.3d 914 (5th Dist. 1991).

This applicant's organizational documents serve to reinforce the above inference because its Articles of Incorporation indicate that it is organized for "social, civic and patriotic purposes." Although the last two of these three

purposes fall within the plain language of Section 200/15-145, that statute is devoid of any references to "social purposes."

Our courts have specifically held that veteran's organizations whose operations are primarily social in nature do not qualify for exemption because they operate primarily for the benefit of their own members rather than the general public. Post No. 21, supra; Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956). As such, these organizations inherently fail to satisfy the statutorily-imposed use requirements.

In the present context, the General Assembly has imposed very specific use requirements which, per the rules cited *supra* at p. 9, can not be expanded beyond those which qualify as "... charitable, patriotic and civic purposes." Furthermore, the General Assembly's use of the conjunction "and" establishes that applicant can not sustain its burden of establishing exempt use without presenting affirmative evidence of all three uses. Post No. 21, supra.

The Association has not sustained that burden because its use is, under terms of its by-laws, limited to "provid[ing], own[ing] and maintaining a suitable memorial for the [Post]." (Emphasis added). Such managerial and business-oriented functions are typically associated with non-exempt holding companies. As such, they do not fall within the limited class of exempt uses set forth in Section 200/15-145. For this reason, and because the Association itself does not qualify as a "veteran's organization,"<sup>5</sup> I conclude that its exemption claim under Section 200/15-145 must fail.

Much, if not all of the foregoing analysis has focused on establishing that the subject property is not in exempt ownership. As such, it has yet to address those portions of applicant's evidence that attempt to establish exempt use via the Post and the Auxiliary. This evidence is not dispositive for several

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<sup>5</sup>. In making this conclusion, I do not in any way imply that the *Post* is not a "veteran's organization." Rather, I merely state that the *Post* and the Association are separate legal entities and that the latter is not the type of organization described in Section 200/15-145.

reasons: first, Section 15/200-145 contains very specific ownership and use requirements which must be strictly construed to require that applicant, (rather than the Post or the Auxiliary), be charged with the burden of establishing compliance therewith; second, the Post, the Auxiliary and the Association are three separate and distinct legal entities; third, neither the Post nor the Auxiliary are the applicant herein; and fourth, neither the Post nor the Auxiliary hold any ownership interest in the subject parcel.

The above considerations render protracted analysis of the remaining evidence somewhat unnecessary. Nevertheless, it bears noting that the testimony of the Post's Standing Commander, Albert Calcari, was inconsistent with some of the documentary evidence. Mr. Calcari testified that the Post's Constitution and by-laws provide for a waiver of dues if a member can not afford them. (Tr. p. 35). He further testified that these documents say nothing about expelling a member for non-payment of dues. (Tr. p. 37).

This testimony could be interpreted as establishing that the Post satisfies one of the requirements for "charitable" use.<sup>6</sup> However, a thorough review of the Post's organizational documents fails to disclose the presence of any waiver provisions. More importantly, careful reading of the Post's by-laws indicates that the Post is authorized to engage in distinctly non-charitable practices, such as imposing automatic suspensions on members whose dues are more than six months in arrears and automatically expelling those whose dues remain unpaid for at least one year.

Mr. Calcari also testified that the Post has never expelled a member for non-payment of dues and has waived dues for seven or eight members. (Tr. p. 35, 37). This testimony is inconsistent with the business-minded tenor of the Post's by-laws and thereby raises doubts as to whether its operations are in fact

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<sup>6</sup>. For extensive analysis of these requirements and how they are used to determine charitable status (or lack thereof), see, Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968), (hereinafter "Korzen.")

"charitable." Remembering that the aforementioned rules require me to resolve all doubts in favor of taxation, I must conclude that the above inconsistencies are tantamount to failures of proof. For these reasons, and because the federal income tax returns admitted as Applicant Ex. Nos. 5 and 6 disclose that the Post's primary sources of income are non-exempt membership dues and bingo revenues rather than charitable contributions,<sup>7</sup> I conclude that the Post's use does not qualify as "charitable."

In summary, the subject parcel is not entitled to exemption from 1994 real estate taxes because it is neither in exempt ownership nor in exempt use. Specifically, the Association, which is applicant herein, is not a "veteran's organization" within the meaning of Section 200/15-145 and does not use the subject parcel "exclusively for charitable, patriotic and civic purposes ...[.]" Moreover, although the Post is a "veteran's organization," its legal identity (as well as that of the Auxiliary) is legally distinct from that of the applicant. Consequently, the Post's failure to satisfy the statutorily-imposed ownership requirement establishes that the subject parcel can not be exempted from 1994 real estate taxes by reference to the Post's activities thereon or those of its Auxiliary. Therefore, the Department's determination denying such exemption under Section 200/15-145 should be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that Lake County Parcel Index Number 08-21-422-001 not be exempt from 1994 real estate taxes.

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Date

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Alan I. Marcus  
Administrative Law Judge

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<sup>7</sup>. See Korzen, *supra*.